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U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JUL 11 2013 ★

-----X Docket#  
UNITED STATES OF AMERICA, : 13-cr-72 (ADS) (AKT)  
: LONG ISLAND OFFICE  
- versus - : U.S. Courthouse  
JOHN DOE, : Central Islip, New York  
Defendant :  
-----X : February 8, 2013

**S E A L E D P R O C E E D I N G**  
TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE A. KATHLEEN TOMLINSON  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Government: Loretta E. Lynch, Esq.  
United States Attorney

BY: Sean Flynn, Esq.  
John Durham, Esq.  
Seth DuCharme, Esq.  
Assistant U.S. Attorney  
100 Federal Plaza  
Central Islip, NY 11722

For the Defendant: Tracey Gaffey, Esq.  
Randi Chavis, Esq.  
Federal Defenders of NY  
770 Federal Plaza  
Central Islip, NY 11722

Transcription Service: Transcriptions Plus II, Inc.  
740 Sharon Road  
Copiaque, New York 11726  
lafertyp@verizon.net

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Proceedings

1                   THE CLERK: Calling 13-cr-72, United States of  
2 America v. John Doe.

3                   Please state your appearances for the record.

4                   MR. FLYNN: Good morning, your Honor.

5                   Sean Flynn and Seth DuCharme and John Durham on  
6 behalf of the United States.

7                   MR. DURHAM: Good morning, your Honor.

8                   MS. GAFFEY: Good morning, your Honor.

9                   Tracey Gaffey and Randi Chavis on behalf of the  
10 defendant.

11                  THE COURT: Good morning, as well.

12                  (Pause)

13                  THE COURT: We have a number of matters to get  
14 through this morning, so let me begin with the referral  
15 from Judge Spatt.

16                  Mr. Kaleebe (ph.), this matter has been  
17 referred to me from Judge Spatt, the district judge  
18 assigned to this case, to administer what's called the  
19 allocution here under Criminal Rule 11 and to make  
20 specific findings as to whether or not the plea that you  
21 intend to enter here today is knowingly and voluntarily  
22 made and to make a recommendation to Judge Spatt as to  
23 whether the plea of guilty should be accepted.

24                  Do you understand that?

25                  THE DEFENDANT: Yes, your Honor.

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1           THE COURT: You have a right, an absolute  
2 right, to have your plea entered before Judge Spatt.

3           Do you understand that?

4           THE DEFENDANT: Yes, I do.

5           THE COURT: And notwithstanding that fact, I am  
6 advised that you're agreeing to have your plea entered  
7 here before me.

8           Is that correct?

9           THE DEFENDANT: That's correct.

10          THE COURT: And have you had an opportunity to  
11 speak to your counsel about having your plea entered here  
12 before me?

13          THE DEFENDANT: Yes.

14          THE COURT: And are you consenting to do so?

15          THE DEFENDANT: Yes, I am.

16          THE COURT: All right. I have also been handed  
17 up a waiver of indictment form and that form says that  
18 you, Mr. Kaleebe, having been accused of attempting to  
19 provide material support to terrorists in violation of  
20 Title 18 of the United States Code Section 2339(a) and  
21 attempting to provide material support to a foreign  
22 terrorist organization in violation of Title 18 United  
23 States Code Section 2339(b)(1)(A), that having been  
24 advised of the nature of those charges, you are  
25 nonetheless, having been informed of your rights, waiving

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1 here in open court today, you're waiving prosecution by  
2 indictment and consenting that the proceeding may be here  
3 by information rather than by indictment.

4 Is that correct?

5 THE DEFENDANT: That's correct.

6 THE COURT: And are you agreeing to that?

7 THE DEFENDANT: Yes.

8 THE COURT: And once again, have you had an  
9 opportunity to speak with your counsel with regard to  
10 this waiver of indictment?

11 THE DEFENDANT: Yes, I have.

12 THE COURT: Has anybody forced you or  
13 threatened you in any way to get you to sign this waiver?

14 THE DEFENDANT: No.

15 THE COURT: And are you doing so freely and  
16 voluntarily?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Based on the  
19 information that I have received from Mr. Kaleebe, I am  
20 signing the waiver of indictment form now, as well.

21 Mr. Flynn, I know that you have an application  
22 here with regard to the record. I'm going to just hold  
23 that over until we finish the plea, if that's agreeable.

24 MR. FLYNN: Yes, your Honor.

25 THE COURT: All right.

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1           I am going to ask my courtroom deputy now to  
2 swear in the defendant and just to let you know,  
3 Mr. Kaleebe, before accepting or making any  
4 recommendation with regard to your plea, there are a  
5 number of questions that I must ask you to insure that it  
6 is a valid plea.

7           And if for some reason you don't understand any  
8 of my questions, I'm going to ask you to please let me  
9 know that in some way either through your counsel or by  
10 raising your hand, and I'll attempt to reword the  
11 question in a way that you can answer it. All right?

12           Do you understand?

13           THE DEFENDANT: Yes.

14           THE COURT: All right. Madam clerk, will you  
15 please swear in the defendant.

16           **(DEFENDANT SWORN)**

17           THE COURT: Actually, a thought just occurred  
18 to me, we might -- we have not arraigned him on the  
19 information; correct?

20           MS. CHAVIS: (Indiscernible).

21           THE COURT: Do we need to arraign him first on  
22 the information?

23           MR. FLYNN: Yes, your Honor.

24           THE COURT: All right. Let's take care of that  
25 first.

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1 MS. CHAVIS: Your Honor, did we inquire at  
2 (indiscernible) to change that plea of guilty f the  
3 information.

4 THE COURT: Well, let me arraign him on the  
5 information first and we'll take it from there, all  
6 right?

7 Mr. Kaleebe, the purpose of this part of the  
8 proceeding is to make sure that you understand what  
9 crimes you're charged with, to make sure you understand  
10 that you have a right to be represented by an attorney  
11 and to address the question of whether you should be  
12 released on bail or held in jail.

13 You are not required to make any statement here  
14 and any statement that you do make, except to your  
15 attorneys, can be used against you.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Mr. Kaleebe, have you had an  
19 opportunity to see and review the information that's been  
20 filed against you in this case?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: And do you understand that you have  
23 been charged in Count I with attempt to provide material  
24 support to terrorists. Specifically here, that in or  
25 about and between August 1, 2011 and January 21, 2012

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1 (sic), here in the Eastern District of New York and  
2 elsewhere, that you with others are charged with  
3 knowingly and intentionally attempting to provide  
4 material support and resources as defined in the statute  
5 that applies here including currency, monetary  
6 instruments, communications equipment, and personnel,  
7 including yourself, knowing and intending that they were  
8 to be used in preparation for and in carrying out a  
9 conspiracy to commit at a place outside of the United  
10 States, an act that would constitute the offense of  
11 murder or maiming if committed in the special maritime  
12 and territorial jurisdiction of the United States, where  
13 one or more of the conspirators would commit an act  
14 within the jurisdiction of the United States to affect an  
15 object of the conspiracy in violation of Title 18 United  
16 States Code Section 956(a).

17 Do you understand that that's what you're  
18 charged with in Count I?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Count II is attempt to provide  
21 material support to a foreign terrorist organization. In  
22 that count, you're charged with on or about and between  
23 August 1, 2011 and January 21, 2013, here in the Eastern  
24 District of New York and elsewhere, along with others, of  
25 knowingly and intentionally attempting to provide

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1 material support and resources as defined in the statute  
2 noted here, including currency, monetary instruments,  
3 communications equipment and personnel, including  
4 yourself to a foreign terrorist organization and here  
5 specifically, al-Qaeda, in the Arabian Peninsula, also  
6 known as "Ansar al-Sharia".

7 Do you understand that that's the second charge  
8 against you in the information?

9 THE DEFENDANT: Yes, I do.

10 MR. FLYNN: I apologize, your Honor. Just to  
11 clarify for the record, with respect to Count I, when  
12 your Honor was outlining those charges, you mentioned  
13 August 1, 2011 to January 21, 2012 as the bookend of the  
14 crime base. It's actually January 21, 2013.

15 THE COURT: All right. Thank you for bringing  
16 that to my attention.

17 Do you understand that the dates we're talking  
18 about in Count I here are between August 1, 2011 and  
19 January 21, 2013? Is that correct, Mr. Kaleebe?

20 THE DEFENDANT: Yes.

21 THE COURT: All right.

22 Have you had an opportunity to discuss the  
23 charges in the information with your counsel, Mr.  
24 Kaleebe?

25 THE DEFENDANT: Yes, I have.

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1                   THE COURT: And you know that you're being  
2 represented by the attorneys from the Federal Defender's  
3 Service here and in particular, Ms. Gaffey and Ms.  
4 Chavis; correct?

5                   THE DEFENDANT: Yes.

6                   THE COURT: All right.

7                   Ms. Gaffey, have you had an opportunity to  
8 review the information with Mr. Kaleebe?

9                   MS. GAFFEY: Yes, we have, your Honor.

10                  THE COURT: And have you advised him of his  
11 constitutional rights?

12                  MS. GAFFEY: Yes, we have.

13                  THE COURT: Is there any issue here with regard  
14 to a preliminary hearing? I assume there is not.

15                  MS. GAFFEY: No, your Honor.

16                  THE COURT: All right. Then let's proceed with  
17 the plea.

18                  Mr. Kaleebe, you have already been sworn in as  
19 you recall; correct?

20                  THE DEFENDANT: Yes.

21                  THE COURT: All right. Mr. Kaleebe, do you  
22 understand that having been sworn now your answers to my  
23 questions will be subject to the penalties of perjury or  
24 of making a false statement if you do not answer them  
25 truthfully?

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1                   THE DEFENDANT: Yes, I do understand.

2                   THE COURT: What is your full name, please?

3                   THE DEFENDANT: Justin Robert Kaleebe.

4                   THE COURT: And Mr. Kaleebe, how old are you?

5                   THE DEFENDANT: 18-years-old.

6                   THE COURT: What is the highest level of  
7                   schooling that you've completed?

8                   THE DEFENDANT: I -- I was in twelfth grade at  
9                   the time of my arrest.

10                  THE COURT: All right. Are you now or have you  
11                  recently been under the care of a physician or a  
12                  psychiatrist?

13                  THE DEFENDANT: Yes, a physician.

14                  THE COURT: And are currently taking any  
15                  medication as a result of being under the care of a  
16                  physician?

17                  THE DEFENDANT: Yes, I am.

18                  THE COURT: And what medication are you taking?

19                  THE DEFENDANT: I am taking a testosterone  
20                  supplement, AndroGel it's called.

21                  THE COURT: Anything else?

22                  THE DEFENDANT: No.

23                  THE COURT: All right. Is there anything about  
24                  that medication that would impair your ability to appear  
25                  here today and give truthful answers to the questions

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1 that I am asking you?

2 THE DEFENDANT: No.

3 THE COURT: In the past 24 hours, have you  
4 taken any narcotic drugs, medicine or pills aside from  
5 what you've just described as the testosterone  
6 medication, have you taken anything else or drunk any  
7 alcoholic beverage in the last 24 hours?

8 THE DEFENDANT: No, I have not.

9 THE COURT: Have you ever been hospitalized or  
10 treated for a narcotics addiction?

11 THE DEFENDANT: No.

12 THE COURT: Is your mind clear as you sit here  
13 this afternoon?

14 THE DEFENDANT: Yes.

15 THE COURT: And do you understand what is going  
16 on in the courtroom?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Ms. Gaffey, have you discussed this  
19 matter with Mr. Kaleebe?

20 MS. GAFFEY: Yes, we have.

21 THE COURT: And does he understand the rights  
22 that he would be waiving here by pleading guilty?

23 MS. GAFFEY: Yes, he does.

24 THE COURT: To the best of your knowledge is  
25 Mr. Kaleebe capable of understanding the nature of these

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1 proceedings?

2 MS. GAFFEY: Yes, he is.

3 THE COURT: And do you have any doubt, Ms.  
4 Gaffey, as to Mr. Kaleebe's competency to plead at this  
5 time?

6 MS. GAFFEY: No, I do not.

7 THE COURT: Mr. Kaleebe, you have the right to  
8 plead not guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: If you plead not guilty, under the  
12 Constitution and laws of the United States, you are  
13 entitled to a speedy and public trial by a jury with the  
14 assistance of counsel on the charges.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: At the trial, you would be presumed  
18 to be innocent and the government would have to overcome  
19 that presumption and prove you guilty by competent  
20 evidence and beyond a reasonable doubt. And you would  
21 not have to prove that you are innocent. And if the  
22 government failed, the jury would have the duty to find  
23 you not guilty.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

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1                   THE COURT: In the course of the trial, the  
2 witnesses for the government have to come to court and  
3 testify in your presence. And your counsel has the right  
4 to cross-examine the witnesses for the government, to  
5 object to evidence that's offered by the government and  
6 to offer evidence on your behalf. You also have the  
7 right to compel witnesses to the trial.

8                   Do you understand that?

9                   THE DEFENDANT: Yes, I do.

10                  THE COURT: At the trial, while you would have  
11 the right to testify if you chose to do so, you would not  
12 be required to testify. Under the Constitution of the  
13 United States, you cannot be compelled to incriminate  
14 yourself. If you decided not to testify, the Court would  
15 instruct the jury that they could not hold that against  
16 you.

17                  Do you understand that?

18                  THE DEFENDANT: Yes.

19                  THE COURT: If you plead guilty and if I  
20 recommend to Judge Spatt that the plea be accepted, you  
21 will be giving up your constitutional rights to a trial  
22 and all the other rights that I have just discussed with  
23 you. There will be no further trial of any kind and no  
24 right to appeal or collaterally attack or at any time  
25 question whether you are guilty or not. A judgment of

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1 guilty will be entered on the basis of your guilty plea  
2 and that judgment can never be challenged. However, you  
3 have the right to appeal with respect to the taking of  
4 this plea and the sentence.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you plead guilty, I will have to  
8 ask you questions about what did you did in order to  
9 satisfy myself that you are guilty of the charges to  
10 which you seek to plead guilty. And you will have to  
11 answer my questions and acknowledge your guilt.

12 Therefore, you will be giving up your right not to  
13 incriminate yourself.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Mr. Kaleebe, are you willing to  
17 give up your right to a trial and the other rights that I  
18 have just discussed with you?

19 THE DEFENDANT: Yes.

20 THE COURT: I have before me now the plea  
21 agreement that you've entered into with the government  
22 which we are marking as Court Exhibit 1.

23 You've seen the plea agreement, correct,  
24 Mr. Kaleebe?

25 THE DEFENDANT: Yes, I have.

15

Proceedings

1                   THE COURT: And is this the agreement that  
2 you've entered into now with the government regarding the  
3 charges in this case?

4                   THE DEFENDANT: Yes, it is.

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THE COURT: Mr. Flynn, I'm going to call upon

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1 you again now on behalf of the government if you would to  
2 fill in the elements of the crimes charged here in the  
3 information.

4 MR. FLYNN: Yes, your Honor. Count I of the  
5 information, your Honor, charges attempt to provide  
6 material support to terrorists, which is a violation of  
7 Title 18 United States Code Section 2339(A)(a).

8 The essential elements of that crime are that  
9 between August 1, 2011 and January 21, 2013, the  
10 defendant knowingly and intentionally attempted to a  
11 substantial (indiscernible) to provide material support  
12 including either money, communications equipment or  
13 himself, knowing and intending that those items were to  
14 be used in preparation in support of the defendant  
15 carrying out a conspiracy to commit at a place outside  
16 the United States, an act that would constitute the  
17 offense of either murder or maiming if it was committed  
18 within the special maritime and territorial jurisdiction  
19 of the United States and for one or more of the  
20 conspirators would commit an act within the jurisdiction  
21 of the United States to affect an object of the  
22 conspiracy.

23 THE COURT: All right. Thank you.

24 Mr. Kaleebe, you've heard the prosecutor  
25 outline the elements of the crimes with which you're

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1 charged.

2 MR. FLYNN: I'm sorry, your Honor, there's also  
3 a second count.

4 THE COURT: So we've had Count I.

5 MR. FLYNN: Yes, your Honor.

6 THE COURT: Let me just ask him, do you  
7 understand Count I?

8 THE DEFENDANT: Yes, I did.

9 THE COURT: All right. Do you want to proceed  
10 with Count II then, Mr. Flynn?

11 MR. FLYNN: Yes, your Honor. Count II of the  
12 information charges the defendant with attempting to  
13 provide material support to a foreign terrorist  
14 organization in violation of Title 18 United States Code  
15 Section 2339(b) (a) (1). The essential elements of that  
16 crime charged in Count II is that during the same time  
17 period, August 1, 2011 and January 21, 2013, the  
18 defendant did knowingly and intentionally attempt or take  
19 substantial steps to provide material support including  
20 either money, communications equipment or himself to a  
21 foreign terrorist organization; here, al-Qaeda in the  
22 Arabian Peninsula, also known as "Ansar al-Sharia".

23 The government would also have to satisfy the  
24 jurisdictional element; that being the defendant's either  
25 a United States citizen, which he is, or that the events

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1 occurred in whole or in part in the United States. That  
2 the defendant knew that the terrorist organization had  
3 been designated as a foreign terrorist organization  
4 (indiscernible), that the defendant knew -- or that the  
5 defendant knew that the organization engaged in terrorist  
6 activity or terrorism.

7 THE COURT: All right.

8 Mr. Kaleebe, you've now heard the prosecutor  
9 outline the elements of the second count in the  
10 information.

11 Do you understand those elements?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: All right. Have you had an  
14 opportunity to discuss with your counsel, the charges --  
15 the two charges that appear in the information?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand those  
18 charges?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Looking at your plea agreement, and  
21 I'm going to be referring to several of the items in that  
22 agreement right now, Mr. Kaleebe, are you aware that  
23 under the statute that applies here the maximum term of  
24 imprisonment that Judge Spatt can impose with regard to  
25 Count I in the information is a period of fifteen years.

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1                   Do you understand that?

2                   THE DEFENDANT: Yes, I do.

3                   THE COURT: And under the same statute, the  
4 minimum term of imprisonment on Count I is zero years.

5                   Do you understand that?

6                   THE DEFENDANT: Yes, I do.

7                   THE COURT: With regard to again, this first  
8 count, the maximum fine under the statute that can be  
9 imposed here is \$250,000.

10                  Do you understand that?

11                  THE DEFENDANT: Yes.

12                  THE COURT: And that restitution here as  
13 provided in the statute will be determined by the Court,  
14 meaning Judge Spatt.

15                  Do you understand that?

16                  THE DEFENDANT: Yes.

17                  THE COURT: There is also a \$100 special  
18 assessment which is attached to this count, which is  
19 primarily in the manner of an administrative fee that has  
20 to be paid in the short term.

21                  Do you understand that?

22                  THE DEFENDANT: Yes.

23                  THE COURT: With regard to Count I also, and  
24 under the statute that applies here, Mr. Kaleebe, if  
25 Judge Spatt imposes a period of incarceration, he must

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1 then impose a period of supervised release, as well.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Again, under the statute that  
5 applies here, the maximum supervised release term here is  
6 life, to follow any term of imprisonment.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: and if a condition of your release  
10 is violated, you may be sentenced to up to two years  
11 without credit for prerelease imprisonment or time  
12 previously served on post-release supervision.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Moving to Count II, do you  
16 understand that under Count II, the maximum term of  
17 imprisonment that Judge Spatt can impose under the  
18 statute here is fifteen years?

19 THE DEFENDANT: Yes.

20 THE COURT: And again, under the same statute,  
21 the minimum term of imprisonment under Count II is zero  
22 years.

23 Do you understand that?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: The maximum fine attached to Count

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1 II here is \$250,000.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: And that once again here,  
5 restitution under the statute will be determined by the  
6 Court.

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: Here again, there is also a \$100  
10 special assessment, again in the nature of an  
11 administrative fee that must be paid in the short term.

12 Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And once again, if Judge Spatt  
15 imposes a period of incarceration here, he then must also  
16 impose a period of supervised release. Here, the maximum  
17 supervised release term is life to follow any term of  
18 imprisonment.

19 Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And do you further understand that  
22 if a condition of that release is violated, you may be  
23 sentenced to up to two years without credit for pre-  
24 release imprisonment or time previously served on post-  
25 release supervision?

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1                   THE DEFENDANT: Yes, I understand.

2                   THE COURT: All right. Do you also understand  
3 that under the terms of the agreement the sentence  
4 imposed on each count may run consecutively?

5                   THE DEFENDANT: Yes.

6                   THE COURT: All right. Now, Mr. Kaleebe, have  
7 you had an opportunity to discuss the Federal Sentencing  
8 Guidelines with your attorneys?

9                   THE DEFENDANT: Yes.

10                  THE COURT: Under a specific Supreme Court  
11 decision the federal sentencing guidelines range is  
12 advisory. It's been declared to be advisory and not  
13 mandatory.

14                  Do you understand that?

15                  THE DEFENDANT: Yes, I do.

16                  THE COURT: In other words, Judge Spatt must  
17 consider the federal sentencing guideline range but he is  
18 not compelled to sentence you within that range.

19                  Do you understand?

20                  THE DEFENDANT: Yes.

21                  THE COURT: After considering the Federal  
22 Sentencing Guidelines range, Judge Spatt must consider  
23 all of the other factors in your case. For example, he  
24 must consider the statutory reasons for sentencing and  
25 those include the following:

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1                   First of all, the nature and circumstances of  
2 the offense and the history and characteristics of you as  
3 the defendant.

4                   He must also consider the need for the sentence  
5 imposed to reflect the seriousness of the offense, to  
6 promote respect for the law and to provide just  
7 punishment for the offense.

8                   He must also consider the need to afford  
9 deterrence as to other criminal conduct and the need to  
10 protect the public from further crimes that you might  
11 commit.

12                  Once Judge Spatt has done so, meaning once he  
13 considered the Federal Sentencing Guideline range and all  
14 of the other factors that I have just discussed with you,  
15 his job then is to determine a sentence that is  
16 reasonable, taking all of those factors into account.

17                  Do you understand that?

18                  THE DEFENDANT: Yes.

19                  THE COURT: Mr. Kaleebe, do you understand that  
20 any estimate of the Federal Sentencing Guideline range  
21 provided by the government is not binding on the Court  
22 unless the Court says that it will be bound in that  
23 fashion?

24                  THE DEFENDANT: Yes.

25                  THE COURT: And do you realize importantly

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1 here, that if the sentence imposed by Judge Spatt is more  
2 severe than you might have expected or anticipated, you  
3 will nonetheless be bound by your guilty plea and you  
4 will not be permitted to withdraw it?

5 Do you understand that?

6 THE DEFENDANT: Yes, I understand.

7 THE COURT: Mr. Kaleebe, do you have any  
8 questions that you would like to ask me about the charges  
9 here or your rights or anything else relating to this  
10 matter?

11 THE DEFENDANT: No, I do not.

12 THE COURT: And are you ready to plead?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: Ms. Gaffey, do you know of any  
15 legal reason why Mr. Kaleebe should not plead guilty?

16 MS. GAFFEY: No, your Honor, I do not.

17 THE COURT: Mr. Kaleebe, are you satisfied with  
18 your legal representation up to this point?

19 THE DEFENDANT: Yes, I am.

20 THE COURT: And Mr. Kaleebe, what is your plea  
21 to Count I of the information?

22 THE DEFENDANT: Guilty.

23 THE COURT: And what is your plea to Count II  
24 of the information?

25 THE DEFENDANT: Guilty.

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1                   THE COURT: Are you making these two pleas of  
2 guilty voluntarily and of your own free will?

3                   THE DEFENDANT: Yes, I am.

4                   THE COURT: Has anybody threatened you or  
5 forced you in any way to get you to plead guilty?

6                   THE DEFENDANT: No.

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13                   THE COURT: Has anyone made any promise to you  
14 as to what your sentence will be?

15                   THE DEFENDANT: No.

16                   THE COURT: Mr. Kaleebe, did you as charged in  
17 Counts I of the information, on or about and between  
18 August 1, 2011 and January 21, 2013, here in the Eastern  
19 District of New York and elsewhere, along with others,  
20 did you knowingly and intentionally attempt to provide  
21 material support and resources as defined in Title 18 of  
22 United States Code Section 2339A(b), including currency,  
23 monetary instruments, communications equipment and  
24 personnel including yourself, knowing and intending that  
25 they were to be used in preparation for and in carrying

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1 out a conspiracy to commit at a place outside of the  
2 United States, an act that would constitute the offense  
3 of murder or maiming if committed in the special maritime  
4 and territorial jurisdiction of the United States where  
5 one or more of the conspirators would commit an act  
6 within the jurisdiction of the United States to affect an  
7 object of the conspiracy contrary to Title 18 United  
8 States Code Section 956(a)?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: And with regard to Count II, Mr.  
11 Kaleebe, did you on or about and between August 1, 2011  
12 and January 21, 2013, within the Eastern District of New  
13 York and elsewhere, did you along with others, knowingly  
14 and intentionally attempt to provide material support and  
15 resources as defined in Title 18 of United States Code  
16 Section 2339A(b) including currency, monetary  
17 instruments, communications equipment and personnel  
18 including yourself to a foreign terrorist organization,  
19 to wit here specifically, al-Qaeda in the Arabian  
20 Peninsula, also known as "Ansar Al Sharia"? Did you do  
21 that?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Kaleebe, I am going to ask you  
24 now please, if you would, to describe in your own words  
25 what you did in connection with the acts charged in

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1 Counts I and II of the information.

2 THE DEFENDANT: In the fall of 2011, I decided  
3 that I wanted to go overseas and join a group that was  
4 engaged in fighting against foreign government officials,  
5 U.S. troops or coalition forces. At meetings in Suffolk  
6 County, Long Island, I and others discussed different  
7 ways we could support such a group such as by providing  
8 money, equipment and ourselves.

9 In the fall of 2012, I obtained a passport and  
10 airline tickets and on January 21, 2013, I attempted to  
11 board a flight to the Middle East at John F. Kennedy  
12 Airport in an effort to reach in -- where I intended to  
13 join the group Ansar Al Sharia, which is another name for  
14 the foreign terrorist organization al-Qaeda in the  
15 Arabian Peninsula.

16 When I was arrested, I was carrying with me an  
17 iPad computer and some money which I was -- I planned on  
18 and was willing to offer it to members of Ansar Al Sharia  
19 to help their efforts.

20 THE COURT: All right.

21 MR. FLYNN: Your Honor, the government in  
22 addition to the allocution that was just put on the  
23 record, the government would additionally proffer that  
24 al-Qaeda in the Arabian Peninsula was formally designated  
25 as a foreign terrorist organization by the United States

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1 Department of State on January 19, 2010.

2 And subsequently, on October 4, 2012, Ansar Al  
3 Sharia was tagged as (indiscernible) as a foreign  
4 terrorist organization.

5 THE COURT: All right. That is so noted. I  
6 need to just ask, Mr. Kaleebe, you concur, you agree with  
7 that statement?

8 THE DEFENDANT: Yes.

9 THE COURT: All right.

10 THE COURT: Mr. Flynn, at this time, I am going  
11 to call on you again please on behalf of the government  
12 if you would, to outline the proof if this case were to  
13 proceed to trial.

14 MR. FLYNN: Your Honor, if this case were to  
15 proceed to trial, the government would call as witnesses,  
16 of course (indiscernible) an undercover officer, who made  
17 recordings over a substantial period of time of both  
18 himself and others, including the defendant in this case.  
19 On those recordings, the defendant can be heard in his  
20 own voice planning -- expressing his desire and plans to  
21 travel to the Middle East, specifically to Yemen, to  
22 provide support and ultimately join in a foreign  
23 terrorist organization, most notably al-Qaeda in the  
24 Arabian Peninsula.

25 In addition to those, recordings, the testimony

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1 of the undercover officer, the government would also call  
2 as witnesses other officers and law enforcement personnel  
3 who would testify that on January 21st of this year,  
4 2013, the defendant had in fact purchased a plane ticket  
5 to the country of Yemen and was arrested when attempting  
6 to board that plane on the jetway at John F. Kennedy  
7 Airport.

8 Your Honor, just correct one point on the  
9 record, the ticket was purchased to the nation of Oman  
10 and again, the government would call witnesses and  
11 officers who would testify and additionally, we would  
12 provide undercover recordings that would show the  
13 defendant's intent was to fly to Oman and cross the  
14 border into Yemen.

15 THE COURT: All right. Thank you.

16 Based upon the information that's been provided  
17 to me both by the government, by defendant's counsel and  
18 by Mr. Kaleebe himself, in particular, I find that  
19 Mr. Kaleebe is acting voluntarily, that he fully  
20 understands his rights and the consequences of his plea  
21 and that there is indeed a factual basis for the plea.

22 I am therefore recommending to Judge Spatt,  
23 that the plea of guilty to Count I, as well as the plea  
24 of guilty to Count II of the information here be  
25 accepted.

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8 Is there anything further from the government?

9 MR. FLYNN: No, your Honor, thank you.

10 THE COURT: Ms. Gaffey and Ms. Chavis, anything  
11 further on behalf of Mr. Kaleebe?

12 MS. GAFFEY: No, your Honor.

13 THE COURT: All right. These proceedings are  
14 concluded then.

15 I will tell you that this matter is set down  
16 for sentencing before Judge Spatt on May 10th at 2 p.m.

17 Good luck to you, Mr. Kaleebe

18 THE DEFENDANT: Thank you.

19 MR. FLYNN: Thank you, your Honor.

20 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 7th day of March, 2013.

  
Linda Ferrara

CET\*\*D 656  
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